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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALLEN M. GILBERT, DAVID LOUIS KAMINSKY, and
BALACHANDAR RAJARAMAN

Appeal 2009-006032
Application 10/635,586[1]
Technology Center 2400

Decided: June 9, 2010

Before JOHN A. JEFFERY, JOSEPH L. DIXON, and JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1]Application filed August 6, 2003. The real party in interest is International Business Machines Corporation.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1 to 18 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejections.

Appellants' invention relates to a way of efficiently performing systems administration policy enforcement (Spec. ¶ [0008]). In the words of Appellants:

> [I]n the context of a request to shutdown a database, a pertinent set of rules in a network administration policy might specify that the database cannot be shutdown during working hours, while an application server remains connected to the database, prior to the performance of an incremental backup, and by anyone other than a specified database administrator. When an administrator requests a shutdown of the database, the exit routine of the console of the database component can trap the request, forwarding such request to a policy evaluation component. The policy evaluation component can retrieve the set of rules and associated state data and information. The state data and information can include, among other things, the identity of the administrator and the components coupled to the database, the time of day and the state of the database (e.g., the last time an incremental backup had been performed).

(Spec. ¶ [0026]).

Claim 1 is exemplary and is reproduced below:

> 1. A systems administration policy enforcement method comprising the steps of:
>
> responsive to a request to perform an administrative task directed to a resource within a computing network, retrieving an administration policy comprising a set of rules for governing said administrative task, further retrieving state data for said resource and applying said retrieved policy to said retrieved state data; and,
>
> permitting said administrative task only if said further retrieved state data satisfies said set of rules in said retrieved policy.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hall	US 5,930,479	Jul. 27, 1999
Krumel	US 2002/0083331 A1	Jun. 27, 2002
Hopmann	US 6,499,031 B1	Dec. 24, 2002
Burns	US 2003/0014644 A1	Jan. 16, 2003
Lortz	US 2003/0018786 A1	Jan. 23, 2003
Bell	US 6,880,005 B1	Apr. 12, 2005 (filed Mar. 31, 2000)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1, 2, 9, 11, and 12 stand rejected under 35 U.S.C. § 103(a) for being obvious over Lortz in view of Hopmann.

R2: Claims 3 and 13 stand rejected under 35 U.S.C. § 103(a) for being obvious over Lortz in view of Hopmann and Bell.

R3: Claims 4 to 7 and 14 to 17 stand rejected under 35 U.S.C. § 103(a) for being obvious over Lortz in view of Hopmann and Burns.

R4: Claims 8 and 18 stand rejected under 35 U.S.C. § 103(a) for being obvious over Lortz in view of Hopmann and Hall.

R5: Claim 10 stands rejected under 35 U.S.C. § 103(a) for being obvious over Lortz in view of Hopmann and Krumel.

Appellants contend that Lortz alone, or in combination with Hopmann, Bell, Burns, Hall, and Krumel, does not render the claimed subject matter unpatentable for failure of the references to teach the claimed "request" (claim 1), "administrative task" (claim 1), "retrieving state data for said resource and applying said retrieved policy to said retrieved state data" (claim 1), "retrieving said state data . . . for other related resources in said computing network" (claim 4), and "requesting remediation of said related resource state so that said related resource state satisfies said set of rules in said retrieval policy" (claim 5). (*See* App. Br. 6, top to middle; 7 top to bottom; 8, middle; 11 top to middle, 12, middle.) The Examiner contends that each of the claims is properly rejected (Ans. 13, top).

We will review the rejections in the order argued and as grouped in the Briefs. The claims are grouped as per Appellants' Briefs. We have only considered those arguments that Appellants actually raised in the Briefs. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue specifically turns on whether the references teach Appellants' claimed "request" (claim 1), "administrative task" (claim 1), "retrieving state data for said resource and applying said retrieved policy to said retrieved state data" (claim 1), "retrieving said state data . . . for other related resources in said computing network" (claim 4), and "requesting remediation of said related resource state so that said related resource state satisfies said set of rules in said retrieval policy." (claim 5).

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellants have invented a method, system, and storage device for enforcing an administrative policy in a computer system (claims 1, 9, and 11). The method involves enforcing the administrative policy on the basis of state data retrieved concerning resource status (claim 1). As claimed, a request is made to grant or deny performing an administrative task (*id.*).

Lortz

2. The Lortz reference discloses a method of enforcing administrative policy in a computer system. (*See* Abstract; ¶ [0002].) The method involves enforcing the administrative policy on the basis of data retrieved concerning resource access status. (*See* ¶¶ [0019], [0024].) A resource

request is made to grant or deny performing an administrative task. (*See* ¶ [0043].) Lortz further discloses that its policy structure has two portions: a device policy and a user policy (¶ [0024]; Fig. 3B).

Hopmann

3. The Hopmann reference discloses accessing a resource on a computer system on the basis of whether a file is locked (*i.e.*, in use by a computer user) or unlocked (*i.e.*, not in use by a computer user). (*See* Abstract; col. 1, ll. 8-10; col. 2 ll. 14-18; col. 8, l. 65 to col. 9, l. 2.)

Burns

4. The Burns reference discloses attempting to access a server resource via a network by all possible routes (¶ [0014]). When no routes are successful in delivering packets to the server, a policy is violated; otherwise, the policy is satisfied (*id.*). The network may undergo reconfiguration to conform to the policy in the event of a policy violation (¶ [0004]).

Bell

5. The Bell reference discloses managing policy rules in a network using an access control list (col. 1, ll. 4-5; col. 2, ll. 16-20).

Hall

6. The Hall reference discloses an authorization system with channelized addressing that allows messages to be sent and received via a network (Abstract). Hall discloses an administrative interface for managing channels within the system (col. 16, ll. 39-58; Fig. 2).

Krumel

7. The Krumel reference discloses a rules engine configured to retrieve rules (¶ [0019]).

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow."

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *Kahn*, 441 F.3d at 988).

ANALYSIS

From our review of the administrative record, we find that the Examiner presents the conclusions of unpatentability on pages 3 to 9 of the Examiner's Answer. In opposition, Appellants present a number of arguments.

Arguments with respect to the rejection of claims 1, 2, 9, 11, and 12 under 35 U.S.C. § 103(a) [R1]

The Examiner finds that Appellants' claimed "request," as recited in exemplary claim 1, is disclosed in paragraph [0043] of Lortz (Ans. 3, middle).

Appellants contend that Lortz does not disclose a "request," as claimed, because paragraph [0021] of Lortz fails to disclose Appellants' "request" (App. Br. 6, top).

We find that Appellants have invented a method, system, and storage device for enforcing an administrative policy in a computer system (FF#1). The method involves enforcing the administrative policy on the basis of state data retrieved concerning resource status (*id.*). As claimed, a request is made to grant or deny performing an administrative task (*id.*). In comparison, the Lortz reference discloses a method of enforcing administrative policy in a computer system (FF#2). The method involves enforcing the administrative policy on the basis of data retrieved concerning resource access status (*id.*) A resource request is made to grant or deny performing an administrative task (*id.*).

We note that both the Examiner's Answer and the Final Rejection, mailed August 21, 2007, unambiguously cite paragraph [0043] of Lortz. (*See* Ans. 3, middle; Final Rej. 5, bottom.) Reading the claimed "request" broadly but reasonably, *see In re Zletz*, cited above, we find that "request," as recited in claim 1, reads on Lortz's request for performing an administrative task in a computer system (*i.e.*, Lortz's request for accessing

a resource)(FF#2). Accordingly, we find no error in the Examiner's rejection.

Appellants further contend that no explanation is given why claim construction of "request to perform an administrative task," as claimed, is a reasonable construction (App. Br. 6, middle). In the Patent Office, claims are given their broadest reasonable construction when read in light of the Specification. (*See In re Zletz*, cited above.) In this case, we note that Appellants' Specification merely discloses examples of the claimed "administrative task." (*See* ¶ [0029].) Upon reviewing the Specification, we find that Appellants chose not to specifically limit the meaning of an administrative task by definitively stating what an "administrative task" does and does not include (*id.*). Accordingly, we broadly but reasonably, *see Zletz*, cited above, read Appellants' claimed "request to perform an administrative task" as being a request to access a resource on a network, as disclosed in the Lortz reference. (*See* FF#2.) Accordingly, we find no error in the Examiner's rejection.

Next, Appellants contend that because Lortz's administrative task is performed by general users, and not specifically administrators, Lortz's administrative task is allegedly not the same as the claimed "administrative task." (App. Br. 7, top to bottom).

We find Appellants' logic unpersuasive because the argument is not commensurate with the scope of claim 1. We note that exemplary claim 1 does not recite specific persons or groups of people who are permitted to perform the claimed "administrative task." Rather, the claim merely recites, in relevant part, "a systems administration policy enforcement method comprising" the claimed "retrieving" and "permitting" steps. Since the

claim does not specify the actor who performs the "administrative task," Appellants' argument falls outside the scope of the claim language. We thus find unpersuasive Appellants' argument. Accordingly, we find no error.

Claim 1 recites, in relevant part, "retrieving state data for said resource and applying said retrieved policy to said retrieved state data; and, permitting said administrative task only if said retrieved state data satisfies said set of rules in said retrieved policy."

The Examiner finds that the claimed "retrieving" step is disclosed column 1 at lines 7 to 9 and column 8, line 65 to column 9, line 2 of Hopmann (Ans. 4, top).

Appellants argue that Hopmann's state data is not related to Lortz's described level of permission for access to a computer resource (App. Br. 8, middle). Instead, Lortz's permission level is related to the client's identity (*i.e.*, the client that is accessing the resource), and not the resource itself (*id.*).

We concentrate on Lortz for all of the limitations of claim 1. We regard the Hopmann reference as cumulative prior art, in that it discloses accessing a resource on a computer system on the basis of whether a file is locked (*i.e.*, in use by a computer user) or unlocked (*i.e.*, not in use by a computer user) (FF#3).

We find that Lortz discloses a policy structure with two portions: a device policy and a user policy (FF#2). We read Lortz's device policy as being similar to Appellants' claimed "state data." We note that Appellants chose not to specifically limit the meaning of "state data." (Spec. ¶ [0026]). Rather, Appellants merely provided examples of state data (*id.*). Reading the claim language broadly but reasonably, *see Zletz*, cited above, we find

that Appellants' claimed "state data" reads on Lortz's "device policy." We find that Lortz must retrieve a first portion (Appellants' claimed "state data") of the policy structure and a second portion (Appellants' claimed "retrieved policy") to gain access to a resource (Appellants' claimed "resource"). Lortz's disclosure is no different from Appellants' claim limitations "retrieving state data for said resource and applying said retrieved policy to said retrieved state data" and "permitting said administrative task only if said retrieved state data satisfies said set of rules in said retrieved policy." Accordingly, we find no error in the Examiner's conclusion of obviousness.

Arguments with respect to the rejection of claims 3, 8, 10, 13, and 18 under 35 U.S.C. § 103(a) [R2, R4, R5]

Appellants make no separate arguments regarding claims 3, 8, 10, 13, and 18 in accordance with the provisions of 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, we find no error in the Examiner's obviousness rejections [R2, R4, and R5].

Arguments with respect to the rejection of claims 4 to 7 and 14 to 17 under 35 U.S.C. § 103(a) [R3]

Dependent claim 4 recites, in relevant part, "retrieving said state data . . . for other related resources in said computing network."

The Examiner finds that Appellants' claim limitation is met in paragraph [0038] of Burns (Ans. 7, top).

Referring back to the "administrative task" of claim 1, Appellants argue that since the Examiner's "administrative task" (cited in Lortz as the

access to a resource) is not affected by "other related resources in the network," as recited in claim 4, the limitations of claim 4 are not met.

More specifically, Appellants' argue:

> The Examiner has failed to provide any reasonable explanation as to why [a person of] ordinary skill in the art would have been reasonably impelled to retrieve state data for other related resources in a computing network when the Examiner's alleged administrative task (i.e., to edit/access the resource) does not appear to be affected by the "other related resources" in the computing network.

(App. Br. 11, top).

In reply, the Examiner finds that the claim language "does not require that the retrieval of other related resources have anything to do with the nature of the administrative task." (Ans. 11, middle). In other words, Appellants argument (*i.e.*, the claimed "administrative task" must be affected by the claimed "other related resources") is not claimed (*id.*). We agree with the Examiner, noting that Appellants' argument is not commensurate with the scope of claim 4. Further, nonobviousness cannot be demonstrated by attacking references individually where the rejections are based on combinations of references. (*See In re Keller*, cited above.) In this case, we find unconvincing Appellants' argument because the argument is not commensurate with the scope of the claim language and is directed solely to Lortz, and not to the combination of Lortz, Hopmann, and Burns. Accordingly, we find no error.

Dependent claim 5 recites, in relevant part, "requesting remediation of said related resource state so that said related resource state satisfies said set of rules in said retrieved policy."

The Examiner finds the claimed "requesting" step in paragraph [0014] of Burns (Ans. 11, bottom).

Appellants contend that the Examiner does not establish that a person of ordinary skill in the art would have recognized Burns's configurable parameters (a new firewall filter) as being applicable to a resource being unlocked and locked (the Hopmann reference) (App. Br. 12, middle).

In reply, the Examiner states in the Answer the rationale for combining the references: "[I]t would have been obvious to one of ordinary skill in the art at the time the invention was made to retrieve the state data for related resources in order to determine why a policy rule was not being upheld and correct the problem if possible)." (Ans. 11, bottom).

We agree with the Examiner. Burns's discloses "automated reconfiguration of the network to restore violated security policies" and "reconfigurations … to make the network conformant with the policy statements." (¶¶ [0004] and [0014]). We find that the claimed "requesting remediation" step of claim 5 reads on Burns's "reconfigurations." Accordingly, we find no error.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 18.

DECISION

We affirm the Examiner's obviousness rejections [R1 to R5] of claims 1 to 18.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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